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99TH CONGRESS
2d Session

SENATE

REPORT
99-392

HR 212

MARY E. STOKES

ORIGINAL

AUGUST 12 (legislative day, AUGUST 11), 1986.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1783]

The Committee on the Judiciary, to which was referred the bill (H.R. 1783) for the relief of Mary E. Stokes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to waive the military retired pay of the claimant's deceased husband for the computation of survivor annuity and to direct payment of that amount in lump sum.

STATEMENT OF FACTS

Mary Stokes is the widow of Bartley T. Stokes, a Federal employee of 23 years' service, preceded by 19 years of active military service, for which he received retired pay.

Under the civil service retirement system, military service for which military retired pay is awarded is generally barred from credit unless the military retiree waives his retired pay and elects instead to receive credit for that service under the civil service retirement system. The reason for this provision of law is to prevent payment of two Federal pensions for the same period of service.

After being informed that he was terminally ill, Mr. Stokes applied for disability retirement from his position with the Naval Air Station at Pensacola, Florida. He also asked to waive his military retirement annuity, effective the day after his disability retirement was approved, in order for his military and civilian services to be

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combined for the computation of his annuity and that of his survivor.

Had Mr. Stokes accepted disability retirement when it was approved in October 1976, and properly executed the waiver of retired military pay at that time, his services would have been combined. He relied, however, on the advice of his agency counselor to use up his considerable accumulation of sick leave instead, and was therefore on the rolls as an employee and still received military retired pay when he died on March 25, 1977.

There is no authority for survivors to waive military retired pay. Mrs. Stokes' survivor annuity was computed on her husband's civilian service only. This legislation would result in an award to Mrs. Stokes, in lump sum, in the amount of money she would have received under her husband's retired pay had his services been combined in the first place. As of August 1, 1986, the lump sum was $44,647.33 and after that, it increases by $481 per month.

The Office of Personnel Management favors passage of this legislation and, after careful examination of the unique circumstances surrounding this claim, the Committee on the Judiciary believes this legislation should pass. Evidence reveals that Mr. Stokes' counselor failed to follow specific procedures outlined in the Federal Personnel Manual with respect to Mr. Stokes' situation.

The following document was submitted to the Senate with respect to Mrs. Stokes' claim:

OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, February 19, 1985.

Hon. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Office of Personnel Management on H.R. 6036, a bill "For the relief of Mary E. Stokes."

Mrs. Stokes is the widow of Bartley T. Stokes, a Federal employee of 23 years' service, preceded by 19 years of active military service for which he was receiving retired pay.

Under the civil service retirement system, military service for which military retired pay is awarded is generally barred from credit, unless the military retiree waives his retired pay and elects instead to receive credit for the military service under the civil service retirement system. The reason for this provision of law is, of course, to prevent payment of two Federal pensions for the same period of service.

On being informed of his terminal illness, Mr. Stokes applied for disability retirement from his position with the Naval Air Station at Pensacola, FL. He also asked to waive his military retirement annuity, effective the day after his disability retirement was approve, in order for his military and civilian service to be combined in the computation of his annuity and that of his survivor. Had Mr. Stokes accepted disability retirement when it was approved in October 1976, and properly executed the waiver of retirement military pay at that time, his service would have been combined. However, he was advised by his agency to use up his considerable accumulation of sick leave instead, and therefore was still on the rolls

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as an employee and still receiving military retired pay when he died on March 25, 1977. There is no authority for survivors to waive military retired pay. Therefore, Mrs. Stokes' survivor annuity was computed on Mr. Stokes' civilian service only.

H.R. 6036 would, effective upon enactment, deem Mr. Stokes to have waived his military retired pay in connection with his application for disability retirement and, therefore, make his military service available for credit in the computation of the survivor annuity subsequently awarded Mrs. Stokes.

While we would ordinarily object to private relief legislation granting one person benefits to which others similarly situated would not be entitled, it does indeed appear to us that this case involves circumstances that warrant special consideration. Since it is clear from the record that Mr. Stokes fully intended that his service be combined and believed that it would be, and since such a combining of his service would have occurred under existing law had he not relied on the ill-considered agency advice that he exhaust his sick leave before accepting retirement, we believe that equity and good conscience call for some corrective action. Because we are not in a position to grant relief to Mrs. Stokes by administrative action, we do not oppose the enactment of H.R. 6036.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

DONALD J. DEVINE,
Director.

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